2:Evans-Pritchard E-5 (1931, 1936) 1951
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588 Yet more rarely a man marries a wife to the name of a dead sister or other kinswoman who was barren in her life, 'for she then counts as a man'. This is perhaps only done when the dead woman's ghost causes sickness to draw attention to her unhappy condition. The children are called after their female pater, and her brother, who has married their mother to her name, counts as their paternal uncle, 'for his sister has become his brother'. On the marriage of the daughters he gets the cattle due to a paternal uncle. It seems that he must not cohabit with the wife himself, because in these circumstances 'your wife is like your sister' (she stands in the place of your sister), but must arrange for a stranger, perhaps a Dinka, to cohabit with her in the hut he builds for her in his homestead.

587 Another type of union, and one that might be expected in a society which has ghost-marriage, is the levirate. Among many African peoples a widow is inherited by her dead husband's brother or son and becomes his wife. This is not the case among the Nuer. With them the bonds of marriage are not severed at death. The widow remains the wife of her dead husband, and any children she may bear after his death, by whomsoever they are begotten, count as his children. Hence Nuer never allow one to use the word *kwen*, to marry, in reference to the taking of a deceased brother's wife. They themselves usually say of the brother that *'ce ciekdeman lath dwil'*, 'he has provided his brother's wife with a hut'. She is still the wife of her dead husband and therefore cannot be remarried. Indeed, I found great difficulty in making the Nuer understand that in our country it is possible for a widow to remarry.

The levir is normally a brother, and a brother is the most approved substitute for the dead man. If a young man dies his sons would not be old enough to take his widow, and he is most unlikely in any case to have another wife than their mother. When an old man with several wives dies, the wives, being as a rule senior women, may be past child-bearing and therefore wish to live with their children, or they may prefer to lead an independent life with lovers than to live with a kinsman of the husband. It is only when an old man dies who has lately married a young wife, who has not yet borne a child or has borne a single child, that a son takes his father's wife. By this time all the father's brothers will have married; and it was probably understood at the time of the old

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587 man's marriage that he was taking the girl to wife for one of his sons. It is certainly rare today for a son to take his father's wife. I was told also that it very occasionally happens that a sister's son takes his mother's brother's widow. Sometimes a paternal cousin of some degree takes the widow. This may be regarded as coming within the idea of the levirate, and Nuer so speak of it. But it rarely happens, and when it happens the union, in fact, partakes more of the nature of concubinage than of leviratic marriage. A brother, especially a full brother, ought to be the leviz, and if any of the brothers are unmarried their rights are paramount. So, bearing in mind these rare exceptions, we may use the term levirate in its classical sense.

Leviratic marriage is very different from ghost-marriage. In a ghost-marriage the vicarious husband actually marries the wife in the sense that he pays the cattle and performs the rites of marriage, even though in the name of another. In leviratic marriage the legal husband has performed these actions himself and the brother merely enters as pro-husband a family already in being. The widow is always referred to as the wife of the dead man and not as the pro-husband's wife, as she generally is in ghost-marriage. Moreover, the children clearly regard themselves as members of a legal family to which the brother of their pater does not belong, although he is their foster-father and may also be their genitor. He may be opposed by the sons when they grow up.

It is true that the brother is the accepted guardian of his dead brother's children, and if he enters into a leviratic union with the widow he has in it the status of legal representative of the husband, so that he can demand compensation if anyone commits adultery with her. He can also, in certain circumstances, as I will explain, divorce her. To this extent leviratic marriage must be regarded as a variety of legal marriage, the simple legal family being contained in its structure as it is in the structure of the ghost-family. But it is also true that, in practice, the pro-husband in leviratic marriage has far less control over his partner than the pro-husband in ghost-marriage; and a widow in Nuer leviratic marriage is much freer than an inherited widow in other African societies. Her favourable position is due to the rule by which a widow is still married to her dead husband, for after his death she can continue to perform her reproductive obligations to his lineage by bearing him children as well by a stranger as by one of his

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•587 brothers, and as well in the home of a stranger as in the home of her husband's kin. If she has children begotten by her husband, her domestic duties to her husband's people are adequately performed by her services to his children. In these circumstances the husband's kin must give her her freedom.

Briefly, the position is this. A woman is married not simply by her husband but by his brothers as well, since she is married with the cattle of their common herd. Consequently, if her husband dies, his brothers expect to exercise their rights in her, and if she is young and some of the brothers are unmarried they may insist on them to the point of dissolving the marriage if they are denied them. In practice, a young widow generally consents to live with one of her husband's younger unmarried brothers. Tradition, good form, and the threat of divorce are powerful sanctions to conformity in this matter, though these influences are not so strong in the case of a paternal half-brother as in the case of a full brother. After the death of a man the children of each of his wives often live with their mothers as largely independent units, each mother looking after the home of her children. If the mother is dead and the eldest son of the hut is married, his younger brothers and his unmarried sisters group themselves round his home, where his wife cooks for them and milks their cows. She takes the place of the mother. Unmarried youths are then dependent on the wife of a full brother for daily necessities, and if he dies and she does not consent to live with one of them, they lose not only a mate but also a housekeeper, cook, dairy-maid, and gardener. They therefore strongly object to her going to live with a lover, especially a lover in a different village. If they are on good terms with their half-brothers they will not resist the widow's desire to live with one of them, but will group themselves around the half-brother whom she chooses, and share his byre and the domestic services of their dead brother's wife in his homestead. If they are not on good terms with their half-brothers they may out of spite tell her, if she refuses to live with one of themselves, to go and bear children by a stranger. Much depends on the strength of family sentiment in any particular case. A full brother has strongest claims on the widow and the strongest feelings of obligation to the dead and his family, and he is therefore likely to oppose her, should she wish to take a lover, more strongly than half-brothers and paternal cousins would do, for their claims are weaker and they have less personal

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interest in the family of the dead, sometimes caring little with whom the widow lives so long as they get their shares of the bride-wealth of her daughters. 587

One finds that, in practice, a young widow who has borne her husband a single child sometimes lives with strangers. The husband's kin try to persuade her to live with a brother, but if they fail, they often, especially in eastern Nuerland, reconcile themselves to her obduracy, though they may insist that she continues to live in their village, as a member of their home, and there bear children to her dead husband by a lover. If she refuses this stipulation they can divorce her, leaving with her parents six head of the bridewealth cattle to retain their rights in the child. If she agrees to it they have few grounds for complaint. The children she bears by a lover are not only their kin but they are born amidst them and reared by them, and the lover not only begets children for them but also acts as their protector and breadwinner if he is a member of the village, or frequently visits the mother to assist her in gardening if he lives in a neighbouring village. 589

The position of a widow who has borne her husband two or more children is different. The return of her bridewealth cannot in any case be demanded: *'Ghok te jokdiew ke nath ca ke de lony'*, 'Cattle which have people (children) on their backs cannot be loosened (returned).' In these circumstances a woman is free to live where and with whom she pleases, and in fact many Nuer widows of this seniority do not live with kinsmen of their dead husbands but 'give birth in the bush' (*'dieth dor'*), as the Nuer say. Wherever a widow lives and by whomsoever her children are begotten, they are all children of the dead husband and their kin will claim them sooner or later. When she is old and past child-bearing she will probably return to her husband's home to be with her grown-up sons. A widow who has grown-up children at the time of her husband's death will not want to take a lover. She will choose to live with one of her children.

A widow is asked to make her choice at her husband's mortuary ceremony. The kin are not likely to challenge her decision on this solemn occasion. If she refuses the brothers and sons of her husband, they ask her whether she wishes to take a lover away from their village (*lum dor*) or to take a lover in the village (*lum ciang*). They hope that she will choose the latter alternative. However, widows often elect to return to their paternal homes and there take

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431 with her parents in the hope that they will later give him her sister in her place.* If he leaves any of the cattle preference will be given to the portions of the spirits and the ghosts. When these have to be returned calves are rubbed on their backs and the spirits and ghosts are told of the divorce and are promised that they will one day be given cows in the place of those they are losing.

Another circumstance which is taken into consideration is whether the wife is being sent away by her husband for barrenness,* or bad habits, which is rare, or whether she is leaving him without his consent and, in this case, whether she has adequate grounds for refusing to live with him such as neglect or cruelty. Whatever the circumstances are the husband has a right either to his cattle or to the children his wife may bear to other men, but it sometimes happens that whereas he wants his cattle back to marry again, since he cannot have a home without a wife, the wife's people tell him that he is responsible for the separation and must be satisfied with the children. They would not refuse him his children. If they tell him this, and they would not do so unless she had already borne him a child and had lived in his home, he has to accept their decision. There are no courts he can appeal to and his kinsmen would be unwilling to support him in resort to force. There is nothing he can do. If his wife has gone back to her parents and they do not want to return his cattle they tell him to come and fetch her. But if she is miserable with him she will only run away again and this time to some distant part of the country. If he complains to her parents they will say that it is no affair of theirs. Let him go and get his wife. In the end he will give her up and claim any children she may bear to lovers. There is always a chance that she will come back to him when he takes charge of her

587
431 cows. I have never known a case in which a wife's parents have kept her husband's cattle and at the same time tried to marry their daughter to another man, and when I asked what would happen were they to try to do so I was told that the husband's

* As a rule a husband will not divorce a barren wife. She will take back most of his cattle but will have a few with her parents in recognition of her place in his home as mother and housewife.

[p. 183 b]

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kin would undoubtedly use violence to get back their cattle and, in addition, curse (*bär*) the wife so that she would either become barren or her children die. On the other hand it sometimes happens that the wife's people promise to return the cattle as soon as they are able to do so but fail to return them all though procrastination on one pretext or another or prevarication, for they may hide (*yiak*) some of their cows in the herds of kinsmen in distant districts. If the husband and his wife's father are members of the same local community difficulties of this kind are not likely to arise and can be settled by discussion and compromise. If they belong to different sections of the same tribe, and even more if they belong to different tribes, the dispute, as is the case with all issues of indemnity, is not so easily settled.

We may now consider in the light of these facts to what extent brideswealth may be said to stabilise marriage. Most broken marriages occur during or shortly after the nuptial ceremonies. One cannot properly speak of divorce at this stage because in Nuer eyes marriage is incomplete till a child has been born, the wife till this event living in her parents' home, being visited by her husband at nights from time to time. That till the birth of a child the wife is considered to belong to her own kin and not to her husband's kin is shown not only in her residence but in other ways, most noticeably by the fact that the husband is held responsible for her death should she die in her first childbirth. He then has to pay compensation for homicide (*thang yike*). During this period when the union is looked upon as still only partly formed, the family and kinsmen of the wife do not, if they are wise, disperse the cattle. Were they to use them for a further marriage they would run the risk that this second marriage might have to be dissolved should the first be broken. Moreover they would find the kinsmen of any girl whom they might wish to marry most unwilling to accept cattle so insecurely held. I have found, when discussing cows in Nuer kraals, that they do not regard those animals they have received on the marriage of a kinswoman as fully theirs, in the sense that they can do what they like with them, till the kinswoman has borne

[844]

[p. 184a]

586 asked what would happen were he to try to do so
583 I was told that the husband's kin would claim
431 back their cattle and, if necessary, use force to
[587] obtain them. Should a wife leave her husband in these circumstances the problem of bride-wealth would probably be solved by the common Nuer expedient of letting her live as a concubine.

583 I think it is evident, in view of the facts stated
431 above, that the fear of having to repay bride-
591 wealth cannot be said to be a very powerful
593 sanction of the marriage union. Nor is there any evidence of which I am aware that would suggest that the greater the number of cattle handed over the more stable the marriage is likely to prove. On the contrary the poverty of a suitor may be to his advantage since the parents of the girl whom he seeks in marriage can insist, and often do so, that he comes to live in their village, where they will receive constant aid from him in hoeing, fishing, building, and herding, and the accretion to their lineage of both the son-in-law who comes in course of time to identify his interests with those of his in-laws, and of his children, who would otherwise, with their daughter, be lost to them. A reputation for hard work, courage, and an amiable character go a long way towards making up for poverty of stock, especially if the father of the girl and the father of the youth are friends or the youth and the girls' brother are comrades.

581 I am prepared to say definitely that the stability
593 of Nuer marriage rests on quite other foundations than payments of bridewealth. It is founded on affection between the spouses, mutual goodwill between the families of husband and wife, and moral and legal norms. Nuer girls are not easily coerced into marriage and it is generally safe to assume that when a woman lives with her husband it is because she chooses to do so and is happy in her marriage. By the time a girl is fully married to a man she knows him well. Usually he has courted her some time before asking for her hand and she must give her consent before his request is granted. She has plenty of time between the betrothal ceremony and the ceremony of consummation in which to withdraw from the marriage should she be reluctant to

[p. 185a]

587 But even
583 should a woman whose husband has died decline
431 to cohabit with one of his paternal kin and prefer
611 to live as a concubine with some man unrelated to her dead husband any children she may bear are his children. Every child must have a *pater* or, which is saying the same thing among the Nuer, belong to a lineage, and if an unmarried woman has a child it is either paternalized by subsequent payment of bridewealth or by payment of a paternalization fee. If the *genitor*, which is unlikely, refuses to pay either bridewealth or fee, the man who later marries her with cattle becomes the *pater*. If she is not married then a man who takes her as a concubine pays the fee and becomes the *pater*.

[p. 188a]

7: Evans-Pritchard E-5 (1931-1936) 1949 FJ22 Nuer FJ22

835 avoided easily and without expense by cutting in twain, in the place of an animal sacrifice, a *kuol*, a wild, yellow, tomato-like fruit found in abundance near habitations. It is only if the paternal uncle is the father's uterine brother or if his family forms a common household with that of the father that relations with his wife are regarded in a more serious light. They may bring on the offenders serious misfortunes.

The uterine brother is a brother *kwi mat*, on the mother's side, and relations with his wife reflect the disgust Nuer feel at any association of sex with the mother. They regard relations with wives of relatives of the mother's side with distaste 'because of the mother'. The uterine paternal uncle partakes in a lesser degree of the same maternal associations because he is a son of the father's mother. But the paternal half-uncles, the paternal half-brothers, and the paternal cousins are 'bulls', and *Tut thilk ruai*, 'There is no incest among bulls.' If they live in different villages from that of the adulterer some compensation in cattle might be exacted, but if they live in the same village it will not be asked for: 'There would be no compensation, for they are of the same community (*cieng*).' Nuer say, however, that adultery with the wife of a paternal half-uncle is wrong 'because of the father', which means because the half-uncle should be treated on the pattern of the father. To have relations with his wife is not incestuous, but shows lack of respect. Relations with the wives of paternal half-brothers and paternal [334] cousins are not subject to the same restraint. It is not *ruai* to [561] have relations with the wife of an age-mate, but it is regarded as a grave breach of confidence, for a man will trust his wife to the honour of an age-mate, and it is believed that the guardian-spirit of the age-set will punish the offender.

835 It is forbidden on incestuous grounds to have relations with
● 587 the wives of kinsmen, other than those mentioned, but only during their lifetime, when they are themselves cohabiting with their wives. It is permissible, indeed to some extent obligatory, to take the place of the husbands in leviratic marriage. It is usual for a widow to cohabit with her dead husband's brother, for preference with his uterine brother. Sometimes the son takes her and occasionally the sister's son. If a man thus cohabits with his father's, uterine brother's, or maternal uncle's widow, he first breaks off the physical relationship between the widow and her late spouse by sacrificing a sheep. Nuer says: 'He

7: Evans-Pritchard E-S (1931-1936) 1949 FJ22 Nuer FJ22

divides them with a sheep.' The widow and the man who is taking his kinsman's place squat inside a hut and the *gueen bathei* of the dead husband's (in the case of the maternal uncle's widow, of the maternal uncle's) lineage, the man who performs sacrifices for the lineage, squats outside. They hold between them a sheep stretched across the threshold and it is there cut in twain. The top half is eaten by the kinsmen of the man who is taking the widow, though he does not himself partake of its flesh, and the bottom half by the women of the household. The hide on which the widow and her dead husband slept is also cut in half and the skin of the sacrificed sheep may be sewn to another to provide a new sleeping-hide. 'The father (or brother, or maternal uncle) is removed', as the Nuer say, not so much, if at all, because there would be any danger of *ruai* but in order to be rid of any evil the dead man might have had in his heart towards the man who is taking his wife, which might injure her or her children. A twin may not take his brother's widow, for twins are one person. If a living father or brother gives up a wife to his son or brother, as occasionally happens, a similar sacrifice has to be made, but here the notion of *ruai* is more pronounced.

The prohibition on a man having relations with a kinsman's wife is part of a more general regulation which forbids, as *ruai*, two close kinsmen to have relations with the same woman, though, here again, 'bulls' do not come, altogether or to some extent, under the ban. Likewise, two closely related women must not have relations with the same man. Nuer youths, who make love to maidens very freely, are careful to inquire of a girl, if they are uncertain of her affairs, whether she has a sweetheart among their close kinsmen. A man may, however, start an affair with a girl as soon as a kinsman has broken off relations with her. This rule, which refers to courtship and sweethearts rather than to casual intercourse, applies to father and son, uterine brothers, and to a lesser degree paternal half-brothers, and also in some degree to cousins, except to paternal parallel cousins, for they are 'bulls' and it does not matter if they share sweethearts. The prohibition is, however, only forcibly enunciated with regard to kinsfolk who form the same *dêp*, dancing-line, which means kinsmen who are also members of the same village. Hence it is said that it is not very dangerous for a man and his mother's brother's son to make love to the same girl if

8:Howell E, G-5 (1942-1944)1954
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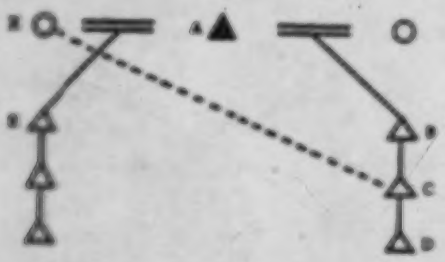
588 removed from E (his father's father's father's son) for there to be any interchange.



The reader will realize that many possible configurations may result. As a general rule the object is to create two balanced branches of a lineage descending from the sons of one father: sons of one mother or of different mothers, but with a common father. (As an actual example, see the marriage of Deng Rea to Nyalam Dior, p. 120.)

The Levirate

587 Bridewealth cattle are not collected by the individual efforts of one man; certain categories of kinsmen co-operate and assist him to get married. Moreover many cattle are held in trust by the family, particularly those inherited by brothers. It is not the legal husband alone who benefits from the domestic and economic services of his wife, and though the children link themselves directly to his name, they are part of the lineage to which he belongs, and his brothers are equally anxious that his offspring shall swell the numbers of their patrilineal group. Therefore, if a man dies, his widow is expected to continue bearing children to his name. Theoretically also she is expected to remain in the vicinity of his near kinsmen and to assist them in normal domestic and economic activities. For both these reasons it is desirable that she should live with one of his brothers or, in certain circumstances, with other categories of kinsmen. The union of a widow with her husband's kinsmen does not constitute a remarriage or a 'ghost-marriage': the marriage is already in existence, and legally she is still the wife of the dead man. Any children she may bear after his death are legally his. It merely means that a kinsman, or another man, acts as *genitor* and *genetrix* of her children.

The levirate is a legal union, and in certain circumstances a man may demand the divorce of his dead kinsman's wife. As will be seen later, this is rarely allowed, and nowadays when the husband is dead a court would only grant a dissolution of the marriage in very exceptional circumstances. Moreover, if an outsider has sexual relations with a widow, her dead husband's kin have a right to demand

8:Howell E, G-5 (1942-1944)1954
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compensation for adultery unless some previous agreement has been reached between them. The legal husband of the woman and the legal father of her children is still the man who has died. The children will be linked in the lineage of his family to his name, and the legality of the marriage is guarded by his heirs. In his name, his heir or heirs will continue to represent his interests, and indeed those interests are their own as members of his kinship group. This point is all-important in the assessment of rights in a widow in legal disputes which appear before Nuer courts. If, as sometimes happens, the bridewealth cattle are returned to the wife's family in the event of her husband's death, no further rights in that woman are retained by the dead man's heirs; but in this case the legal marriage has been dissolved, and the situation is not really different from normal cases of divorce.

Differences between 'Ghost-Marriage' and the Levirate

(i) A 'ghost-marriage' means that the vicarious husband as legal representative of the dead man actually *marries* the wife in the sense that he collects and hands over the bridewealth cattle for her and performs the marriage ceremonies with her on behalf of the dead man. In the levirate, the kinsman merely enters as a substitute into a marriage which is already in existence.

(ii) Generally speaking, in the case of the levirate, since the marriage was not actually initiated and negotiated by the pro-husband, he has less control over the widow than he would over a 'ghost-wife'.

(iii) The levirate differs from 'ghost-marriage' in that the legal husband (*pater*) and his widow once lived together as man and wife.

(iv) Although the leviratic family, like the 'ghost-family', consists of the dead husband (*pater*), the pro-husband (*genitor*) and the children born of the woman, the children, or at least some of them, may have been begotten by the dead man. Therefore in a 'ghost-marriage' the dead man is the *pater* but never the *genitor* of the children; in a leviratic union the dead man is always the *pater* and he may have been the *genitor* of all or some of the children. The distinction is emphasized in Nuer terminology: a child begotten by the dead man is known as *ret*, an orphan. A 'ghost-child' is known as *gat jiooka*.

The levirate is established by the previous payment of bridewealth cattle. Therefore, unless the bridewealth is returned for some definite misbehaviour on the part of the widow, the simple legal marriage continues after the death of the husband and children born either before or after his death are legally his.

Categories of Persons with whom a Widow lives

The most usual and correct form of leviratic union implies the cohabitation of a woman with her dead husband's brother, and in

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587 rarer cases with a half-brother or more distant kinsman. Sometimes a widow lives with her husband's son (by another wife), but this is usually only in the case of an old man who dies leaving a young widow. Normally, if a man dies young, his children will be too young to inherit his widow. If a man dies old, his wives will usually be old too and will live with their own offspring, not as wife, but as 'mother of the household'. In very rare cases a widow is taken by her husband's sister's son.

According to customary law a widow is expected to live with one of her late husband's brothers. Among the Nuer brothers must marry in strict order of seniority, and the cattle held by them as a family are used in that order. Therefore if a married man dies leaving an unmarried brother, the latter will expect to take over his widow. Legally, he is entitled to do so, and if she refuses he can call for a dissolution of the marriage and return of the bridewealth cattle. The application of this law varies according to circumstances, and also according to the conventions held by different Nuer tribes, but it is rarely employed. If the widow is determined to live with someone else, and particularly if she declares her determination from the beginning, that is at the mourning ceremony of her husband, she is usually allowed to have her way. Moreover, if she has borne two or more children, she is considered to have fulfilled her procreative obligations, and it is less likely that there will be any objection to her taking a stranger as her lover. A widow, according to the circumstances, may elect:

(i) to live with her late husband's brother or kinsman;

(ii) to take a lover who is not a relative from her late husband's village community. In this case her husband's group is not deprived of her assistance in communal economic activities, and they are able to watch over the upbringing and education of her children.

(iii) to return to her own family and live among them, taking a lover or lovers from some stranger lineage.

[586] (iv) to go off to some other vicinity and there live with a lover. If she did so without the agreement of her late husband's family, a divorce could be demanded, unless she had sufficient children to make it unlikely that it would be in the interests of her husband's kinsmen to demand it.

611 587 In all the circumstances described above, her children, wheresoever born and by whomsoever begotten, are legally the children of her late husband. This is the hard and fast rule. Only the circumstances set forth in (i) above can be described as the levirate. The other forms of union differ both from 'ghost-marriage' and the levirate. Such unions have been termed 'widow-concubinage' by Professor Evans-Pritchard.

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'Widow-Concubine'

The main points are as follows:

(i) The man who performs the duties of husband to the widow is in no sense the legal father of her children, nor is he heir to the legal husband.

(ii) He cannot compel her to live with him or claim compensation if she commits adultery. The compensation for adultery would concern her late husband as represented by his living brothers or legal heirs.

(iii) He cannot divorce her or demand back her bridewealth for there is no legal marriage between him and the widow, only between the widow and her late husband.

(iv) He is not even the legal representative of the dead man and therefore, unlike the levirate or 'ghost-marriage', the characteristics of the simple legal family are not contained in the structure of this union.

The man's position is therefore, in theory, a precarious one. In fact, most of these unions are arranged with the agreement of the dead man's legal representatives and thereby receive social recognition not only from the world at large, but also from the dead man's family.[1] If no such agreement exists the control over the children and the widow may be a source of legal dispute. Such disputes are not uncommon.

Unmarried Concubines

All these forms of domestic and procreative union have one principal common factor: the children of the woman, whether she be wife, 'ghost-wife', widow or widow-concubine, belong to the man on whose behalf the bridewealth cattle were transferred to her family, and they trace their descent through his name to his more remote ancestors. There are, however, forms of union which are in no sense legal because no cattle have been paid as bridewealth for the woman. Children born of such unions will be attached in name to their mother's lineage unless their father chooses to legalise their status and attach them to his lineage by payment of a special fee, or unless the mother is legally married later to some other man who assumes the status of legal father to the children.

The status of women among Nilotic peoples is high. In the question of marriage they usually have a fairly free choice, though there are undoubtedly many occasions when father or brothers will use persistent persuasion or even force to compel a girl to marry a man she

[1] A widow living in this form of union with a man is known as *nhiik mo kɔɔ* and her children as *guut cieŋ*.

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nor to the normal settlement of debts. This is an interesting point of law because it shows that the enforced payment of compensation (*thang*) and the imposition of punishment in the form of fines are regarded as acts of God rather than the individual responsibility of the offender. It is of course assumed that the bridewealth cattle were used for one of those purposes unwittingly and without previous knowledge that owing to divorce their return would be demanded. The first rule (*a*) appears to be traditional, the second (*b*) is probably a recent development though there are no records of legislation or of intervention by the Administration.

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Further Rules in Divorce

A Woman may not be remarried until Previous Marriage has been Dissolved

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It is a fundamental rule that a remarriage cannot take place until the previous marriage has been dissolved and all the necessary cattle returned to the husband. Nor may bridewealth cattle from a remarriage be used to pay back cattle owed on a previous one where the same woman is concerned. This sometimes occurs, but is rare because there is a religious sanction as well as a social one involved. Nuer say that the cattle should not mix and that if they did disasters would follow.

Wiw Nyak v. Nyadiny Yal (Bul Nuer Appeal)

Wiw married Nyadiny's daughter X, who bore him one son. Wiw then demanded a divorce on grounds of desertion. Nyadiny is a widow, and her late husband had no close kinsmen. She had already used some of the bridewealth cattle in payment of previous debts incurred by her late husband, and was unable to return all the bridewealth. Seven cattle remained outstanding. Deyim Turuk then began negotiations for marriage with X and paid several head of cattle. Wiw immediately claimed these through the courts. Appeal court ordered return of all cattle to Deyim and return of X and child to Wiw. The union between Wiw and X was still considered legal, while Deyim's cattle had been received illegally.

Return of Extra-marital Payments

Payments made as gifts or as compensation for minor offences against prescribed marital relationships are not normally claimable by either party on divorce. Such payments are considered outside the general bridewealth transactions.[1]

This and other points are illustrated in the following cases:

Gac Cuol v. Mathot Cang (Nuong Nuer Case)

Gac Cuol married Mathot's sister. He then divorced her on grounds of her infertility. All cattle were returned to Gac with the exception of one cow-calf,

[1] As will be seen later, offences by an outsider against the husband's physical rights in his wife are treated differently (see p. 186).

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which Mathot alleged had been killed by a lion while in his possession. Gac disputed this, and further claimed a cow from Mathot on the grounds that he had previously given Mathot two mosquito nets (value: 150 piastres). Court ruled that:

(i) Cow-calf had been killed by a wild animal while in Mathot's possession. He was therefore not responsible.

(ii) The mosquito nets were a gift outside the transaction of marriage, and were not reclaimable in any form.

Riak Deng v. Gatbunk Nyak (Nuong Nuer Case)

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Gatbunk married Riak's sister. In the first year of marriage Gatbunk was profoundly shocked because his wife urinated in his cattle-byre.[1] This nearly led to divorce, but the affair was patched up by Riak paying Gatbunk 40 piastres as compensation to 'ease his heart' (*puic kuic*). With this money and some of his own, Gatbunk bought a cow which subsequently produced five calves. After five years the marriage was dissolved at Gatbunk's request. Riak then claimed the cow and five calves, which in his opinion were his legal right. Court ruled that Gatbunk had the right to retain only the original cow, while Riak should have the offspring. This ruling was given after considerable argument, and was an obvious compromise. The judgement was reversed on appeal on the grounds that the 40 piastres was paid as compensation for a definite offence committed by the woman, was not part of bridewealth, and was therefore not returnable in any form.

Gatbuy Lueр v. Tutdel Turuk (Nuong Nuer Appeal)

Tutdel was court policeman under Chief Gatbuy Lueр. Tutdel subsequently married Gatbuy's daughter, but divorced her. All cattle were returned to Tutdel, but Gatbuy claimed one cow previously given to Tutdel. Court ruled that the cow had been given to Tutdel as a gift in return for his official and personal services and was not affected by the marital relationship of the two. Gatbuy had no claim on the cow. This was confirmed on appeal.

Divorce of Widows living in Leviratic Union or 'Widow-Concubinage'
(see pp. 78, 81)

Generally speaking, the death of the husband precludes the possibility of dissolution of marriage. A Nuer court will not allow proceedings for a divorce to go through unless the husband is present to state his claims. This applies even when no children have been born of the union previous to the husband's decease or subsequently in leviratic union or 'widow-concubinage'.

Cue Lony v. Kulang Cul (Leik Nuer Appeal)

Cue's paternal uncle married Kulang's sister. The uncle then died, and Cue took the woman to live with him. Cue then claimed a divorce on grounds of the woman's barrenness. Appeal court upheld previous judgement that no dissolution was possible even though the woman had borne no children at all.

Riak Kuar v. Lutjor Kuon (Dok Nuer Appeal)

Gatmac Kuar married Lutjor's sister. Gatmac died, and Riak took over the woman in levirate union. She then deserted him for another man. The

[1] A breach of good manners and a particularly reprehensible offence because it was done in the cattle-byre (*luak*), which is the exclusive stronghold of the male sex.

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woman had one child. Risk then demanded dissolution of the union but this was refused both in the original court and on appeal.

I think that Nuer feel that a widow should have a wide choice as to whom she takes as her lover after her husband's death and that, provided the rights of the deceased husband, including the legal status of the children, are recognised, there should be no interference. Dissolution on grounds of barrenness is, however, sometimes accepted, especially if the marriage had not lasted long before the husband's death. The age of the widow is therefore relevant, and it must be remembered that a young and attractive woman is likely to be guarded more closely by her late husband's kinsmen than an older woman. In the first instance physical rights over her are in issue, in the second only domestic and economic rights, and the emphasis is on her ability to produce children to her late husband's name.

In 'ghost-marriage' the position is different. The vicarious husband is regarded as the principal, and if the reasons were sound and acceptable, a Nuer court would undoubtedly allow dissolution. 'Ghost-marriages' are in fact treated in exactly the same way as simple legal marriages.

4. SUMMARY

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Based on these principles the law of divorce is rarely disputed, and cases which appear before the courts usually concern specific claims for cattle which have not been honoured. For example, a divorce takes place, and all cattle are returned save two. The wife's people ask for time to find them, and the debt hangs over for a number of years, possibly until the next generation. A dispute may then arise as to whether the cattle were actually paid or not or whether their theoretical increase in the interim should be taken into consideration. Though there are points which are sometimes disputed, Nuer divorce laws, unlike so much of the customary law administered in their courts, can be conveniently summarized:

Dissolution of Marriage owing to Death of Wife

(i) A △ marries B ○. B dies before bearing any children to A. A has a right to demand the return of all his cattle paid as bridewealth. Among some tribes he might be expected to leave one cow as 'cow of burial' with her family, but this is a ritual payment rather than a specific deduction.

(ii) A △ marries B ○. B dies leaving one child alive. A is entitled to the return of all his cattle, but will usually leave sufficient to retain legal parenthood of the child (*rusk nuer* or *rusk gaandar*).

(iii) A △ marries B ○. B dies leaving two children. In some tribes B will be said to have fulfilled her procreative obligations, and a dissolution of marriage therefore is unwarranted. In other areas A might expect the return of all his cattle less deductions for the two children.

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Gai appealed on the grounds that he had evidence that Nyandeang had criminal adultery with three other men, Kob Col, Ngwaan Dhiu, Tiep Both, and had done so during the same period as with Gai, and in the absence of Jal. Appeal court accepted this evidence as true. Jal then stated that he did not deny the allegations of Gai, though he had not heard of them before, but the evidence was not relevant to the case. He had claimed *yang hale* only, not full compensation. He admitted Gai was father of the child, and so did Gai. Court upheld previous judgement and ruled that Jal should keep the *yang hale*.

Questioned on the legal issues involved, the court held that if a man has sexual intercourse with a woman who is the legal wife of another, he is liable to pay six head of cattle which include *yang hale*. If she bears a child attributed to the act of the adulterer, five head must be returned, *yang hale* remains. The fact that the woman is proved to have committed adultery with other men, if more than three men are involved, absolves all of them from paying compensation whether a child is born or not, but if one of them is proved to be the father of the child, he must still pay *yang hale*.[1]

Compensation cannot be Claimed more than twice where one Woman is Concerned

It is also generally held that a man cannot claim compensation for adultery with his wife (the same wife) on more than two occasions. After the fulfilment of two claims of this sort, in which he may have received no less than twelve head of cattle, his wife acquires the reputation of being 'loose'. He will certainly not succeed in a claim instigated out of court, and it is extremely unlikely that a Nuer court would uphold his claim. Moreover he may well be suspected of exploiting his wife's physical charms to his own advantage.

Adultery with Widows

When a woman whose husband is dead has sexual relations with a man without the express permission of her husband's legal heirs, damages for adultery may be claimed, but the right is not often exercised. It depends on a variety of circumstances, particularly the age of the woman, for, if she is young and attractive, one of her husband's kinsmen will wish her to live with him. As we have seen, the main object in the minds of the dead husband's kinsmen is that the woman shall bear children to his name, and they are usually prepared to give her a wide choice, provided she does not go to live too far away from them. They will often object if she goes to live with a man whom they have not accepted as her lover (*koat*), and they will also object

[1] For recent legislation on this subject, p. 187. The idea is a Nuer one, but the enactment is the result of legislation promulgated by the Administration.

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if the act of adultery, for it amounts to this in such circumstances, is casual with no permanent basis of cohabitation. In 'widow-concubinage' a stable relationship between the widow's mate and the kinsmen of her husband is naturally desirable. They will expect him to treat them as kinsmen, and between them will arise a relationship which is patterned on kinship. The rights of the husband in his wife are inherited and upheld by his heirs, and they are entitled to compensation for an infringement of these rights.

Tac Nyagh v. Kwoiny Rusk

Jogh married Nyabwogh. Jogh died shortly afterwards without issue. Nyabwogh was a young woman, and Tac, as one of Jogh's heirs, wished her to live with him so that he might benefit from her presence in the home, not only as a mate but in carrying out domestic duties. He had no wife himself. Nyabwogh ran off with Kwoiny Rusk, who was living in another part of the country. Tac made some effort to persuade her to return to him, but she refused. He then went to court and judgement was given that Kwoiny, who was deemed responsible for enticing Nyabwogh away, should pay nine cows as *yang hak*. His act was considered to be adultery. Court ordered immediate return of Nyabwogh to Tac.[1]

A case of this sort is not common, and I have no record of a court ordering the payment of compensation in full, only of *yang hak*, although theoretically the deceased's heirs have the right to claim it. In this case Nyabwogh had borne a child to Kwoiny Rusk, who, as physiological father, would in any case only be liable to pay *yang hak*.

From these and other cases of the same nature, it is clear that the death of a husband does not theoretically imply a reduction in his legal rights over his wife and her children whoever their physiological father may be, and that these rights are guarded by his heirs. It is also clear that the husband's domestic, economic, and physical rights are not diminished in theory, but whether his heirs will lay strict claim to them depends on a variety of circumstances. If the wife is young, his heirs will be reluctant to let her go, though they do not usually insist on her staying. In any case she is likely to have a wide choice from among his kinsmen. They will also wish to benefit from her domestic and economic activities and, of course, always prefer that she should stay within their community. Even if she goes to a man outside the community, they wish her relations with him to be stable and permanent and, if accepted, he will be drawn to some extent into the field of kinship and become one of them. 'Widow-concubinage' does not imply complete sexual freedom of an indiscriminate kind. At any time the dead

[1] This was not the end of this case. It was subsequently discovered that Nyabwogh had gone off to live with another man, an arrangement made by her brother, who had also illegally transferred three head of cattle, although she was already legally married to Jogh and there had been no return of bridewealth. Finally, the marriage was dissolved, her brother was punished for what is considered a serious wrong, and Kwoiny received his cow back again.

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brothers' heirs may draw attention to their rights in the woman and, if she has relations with a man who is objectionable to them, they may treat the case as one of normal adultery and claim damages. Such cases are nowadays usually taken to court, and the line adopted by its members will again depend on circumstances. They will, however, admit the validity of the claim even though they are not always prepared to enforce it.

Bang Wic v. Lio Ran (Dok Nuer Court)

Lio Ran committed adultery with the wife of Bang's deceased brother. The case was brought before the Dok court, which judged that no compensation was necessary, 'as the woman is a widow'. This judgement was, however, revised by the appeal court, and Lio ordered to pay to Bang one cow or young bull.

Adultery and 'Ghost-Marriage'

The same theoretical law applies to 'ghost-marriages', but the attitude is different. A 'ghost-wife' is actually married by a man's heir after his death, and the vicarious husband in this case performs all the ceremonial of marriage as well as operating the transfer of bride-wealth. Except that legal paternity is vested in the person of the deceased, which fact is of greater significance when the children of the union come of age, the union does not differ from a straightforward simple legal marriage. Moreover the vicarious husband, in his capacity of legal heir to the deceased, stands in the same relationship to the woman and the children as her 'ghost-husband'. The only real difference is that the children will link their names in the lineage structure to the latter, and this is a matter of greater importance in posterity than the present. For this reason, the emotional attitude of the vicarious husband to the wife, their relationship, and their life together are indistinguishable from those found in simple legal marriage, and considering the high proportion of 'ghost-marriages' this is not surprising. The woman is usually his own choice, he has courted her, won her, married her, and his relationship is therefore much more intense and personal than his relationship with his brother's widow. Hence, though a man may overlook an act of adultery with his brother's widow, or the widow of any man to whom he is legal heir, he will certainly not do so in the case of his brother's 'ghost-wife'. The reaction to adultery in 'ghost-marriage' is identical with that found in simple legal marriages, and it is doubtful if a Nuer court would regard the theoretical distinction as relevant to the issue.

Adultery with the Wives of Kinsmen

The full rate of compensation is usually demanded unless the husband and the adulterer are on exceptionally good terms in other

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can only do so in a qualified sense. However, it is difficult to construct 538
an adequate terminology to describe every type of Nuer procreative union 768
and bio-domestic group, and we shall have to compromise between the requirements of strict social morphology and the privilege of everyday speech. In speaking of the union between a man acting in the place of a ghost and his " wife " I shall speak of " ghost-marriage " and likewise I shall call a child born of such a union, and begotten by the man who stands in the place of the ghostly pater, a " ghost-child ". In this I conform to [775]
Nuer usage for they speak of a woman so married as a *cek jouka* (" the wife of a ghost ") and of her children as *gaat jouka* (" children of a ghost "). We may therefore describe the family that develops out of a ghost-marriage as a " ghost-family " in acknowledgment of the ghostly status of the pater of the children. Their genitor and foster-father has the status of vicarious husband to their mother. A ghost-family is therefore a variety of the legal family. The legal family is contained in its structure.

It would be pedantic to refuse the word family to the group consisting of a woman, her vicarious husband and her children by him, for he not only stands in the place of the husband and in the place of the pater but his behaviour towards his " wife " and " children " is, at any rate during the minority of his sons, indistinguishable from the behaviour of a man who is husband and pater in full legal sense. It would give a false impression were this group to be called a " natural family " in contrast to a " legal family " because the woman's partner has the same legal rights over her as her husband would have were he alive, and he exercises the same authority over his children in their minority as their pater would do. During the minority of the children the legal family and this other group in which one member plays a vicarious part are alike in patterns of behaviour and sentiment. At that time it is only in a formal legal sense, particularly with regard to descent, that they differ. It must be understood, therefore, that when I speak of a ghost-marriage I refer to a union of three persons, a ghost and his wife and the man who takes the place of the ghost in marital relations, and the children born of the wife. Using this terminology, which I admit is clumsy, the difference between a legal marriage which is an actual marriage and a legal marriage which is a ghost-marriage is that the first is a union of husband and wife, while the second is a union between ghostly husband, pro-husband and wife; and the difference between a legal family which is a simple family and a legal family which is a ghost family is that the first is a group consisting of a husband and wife and children born of the wife in the union of marriage, while the second is a group consisting of a ghostly husband, a pro-husband, a wife, and children of the wife born in the union of marriage. It must be remembered that the pro-husband is not the pater of the children.

When Nuer speak of a ghost-marriage they generally say that the vicarious husband has " kindled the fire of the dead." Thus when a man [561]●
marries his father's brother a wife they say of him *Ce mac gwandraade pat*, " He has kindled the fire of his father's brother."

A very great many Nuer domestic groups are ghost-families. They must be almost as numerous as simple legal families. Not only do many

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rare and of little social importance. I know of no cases at first hand and am therefore unable to vouch for the information given to me and to say what are the interrelations between the people concerned. On the other hand ghost-marriages in which a man takes a wife to the name of a dead kinsman are so common that several cases can be recorded in even the smallest village. A large number of such unions are listed and shown diagrammatically later in this paper so that I will only instance a single typical case here. Most of the people in Diagram No. IV belong to the Thiang tertiary section of the Lou tribe and dwell at Kurmayon on the Sobat River. Thiep ♂—Gol ♂ was slain by Dinka and his sister's son, Duob ♂, married him a wife, Kan ♀—Bie ♂. Kwany ♂—Thiep ♂, my informant, was born of this union. Loc ♂—Buai ♂ (or Loc ♂ -Nyakweka ♀ as we called him at Kurmayon, his mother's village) was slain during fighting between the Thiang and the Yol tertiary sections. His brother's son, Lam ♂ -Duob ♂, has married him a wife, Nyabiem ♀—Bel ♂. It is worth noting that Kwany ♂ gave several cattle to marry Nyabiem ♀ to Loc's name because Loc ♂ is his father's sister's son (he used to speak of him as *gat gwar*, "son of my father").

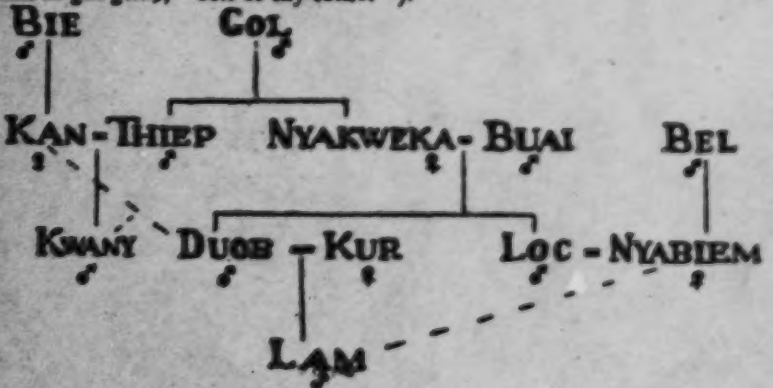

Diagram IV

Another type of procreative union results from the custom of the levirate. When a man marries, his kinsmen provide the bride-cattle and the cattle go to the wife's people and there breed and provide them with food, and with cattle for their own marriages. The wife leaves her kinsmen and becomes one of her husband's people. Her reproductive and economic services are not due to her husband alone but to all her husband's near kinsmen who speak of her as "our wife". If the husband dies Nuer do not regard the union as broken. The wife continues to bear children and, whoever may beget them, they are counted as children of the dead man. But though the status of the genitor does not affect the children, who take their status from their pater, it is considered that a

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587 588 768 woman ought, on the death of her husband, to go to live with one of his brothers, since she was married with the cattle of their kraal. This is not a re-marriage. The woman is still wife (*cek*) to the dead man but she lives with one of his brothers who takes the place of her husband, raising up seed to his name, and acting as foster-parent to the children and bread-winner to the family. Nuer never allow one to use the word "marry" (*kuen*) in this connection and I have sometimes provoked them to merriment by this mistake. They usually say *Ce cek deman lath duil*, "He has provided his brother's wife with a hut". We may nevertheless speak of this form of cohabitation as leviritic marriage. Nuer regard it as so desirable and logical a custom that I always had the utmost difficulty in explaining to them that in our country a widow may remarry. They wanted to know how this could be so when cattle had been paid and were scornful at the information that in Europe we do not pay bride-wealth.

587 588 593 Leviritic marriage is very different from ghost-marriage as will be seen when we consider the relations between the children and their genitor. It may be said whereas a ghost-marriage means that the vicarious husband actually marries the wife in the sense that he pays the cattle and performs the ritual of marriage, even though it is to the name of another, in leviritic marriage the legal husband has performed these actions and the brother merely enters as pro-husband a family already in being. The widow is always known as the wife of the dead man and the children clearly regard themselves as members of a legal family to which their pater's brother does not belong. The brother has less control over the widow than a man has over his partner in ghost-marriage and he may be opposed by the sons when they grow up.

Although this is not a marriage in the Nuer sense I use the expression "leviritic marriage" for want of a better and because I wish to emphasize the brother's legal position as pro-husband, for he has legal claim on the services of the widow in virtue of his kinship to the dead man. It was not the dead man alone who took her for wife but it was the brothers as a whole who married her with their cattle. If she refuses to live with him he can, in certain circumstances, divorce her, and if another man has relations with her while she is living with him he can sue the man for adultery. Leviritic marriage, therefore, like ghost-marriage must be conceived of as a variety of legal marriage, being a union between three persons, the dead husband, the pro-husband who is also the dead husband's brother, and the wife. It differs from a ghost-marriage in that the husband and wife at one time lived together in matrimony. A leviritic family, on the same principle, consists of the dead husband, the pro-husband who is also the dead husband's brother, the wife, and the children born of the wife. It generally differs from a ghost-family in that the children, or some of them, were begotten by the dead husband. Such a child is therefore a *ret*, or orphan, and not a *gat jooka*, or ghost-child. Here again the pro-husband can never be pater to children born of the wife, whether begotten by the dead man or by himself. The simple legal family is contained in the structure of the leviritic family as it is contained in the structure of the ghost family.

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Most African societies practise the levirate but the Nuer regulation by which the widow is still married to her dead husband profoundly modifies the practice in their society. It gives the simple legal family great stability and durability. The domestic group, the household, may break up through the death of the father but the simple legal family, the group of husband, wife and children born of the wife, endures. The personnel of the household may undergo many changes but the institution of the family is fixed by payment of bride-wealth which determines who is pater to any children born of the wife, whether the man be alive or dead. The family structure survives dispersal of its members and even the death of some of them. 587 768 592 593

But, although a wife is tied legally to her husband after his death, she has far more actual freedom than in societies where she can be remarried by one of her husband's kinsmen. The fact that she cannot become the legal wife of one of her dead husband's brothers considerably lessens their control over her. After her husband's death she can continue to perform her procreative obligations to him by bearing him children as well by a stranger as by one of his brothers, and she can rear her children in the home of a stranger as well as in the home of her husband's kin. Moreover, if during her husband's lifetime she bore him children her domestic and economic duties to her husband's people are adequately performed by her services to his children. In these circumstances, as will be explained more fully later, the husband's kinsmen must give her her freedom. 587 593 562

Leviritic marriage normally means the cohabitation of a man with his dead brother's wife. Sometimes, however, she lives with one of his sons. If a young man dies his children will not be old enough to take his wife. Also he is most unlikely to have another wife than their mother. Moreover, he probably has younger brothers who, being yet unmarried, have first claim on her services. When an old man, who has married several women, dies it is probable that most of the wives will be old also and elect to live with their own sons and daughters, or, if they wish to continue sexual relations, will choose to live with a lover who is not of their husband's kin. It is only when an old man dies who has lately married a young wife (who has not yet born him children, or who has born him a single child), and whose brothers are all married, that a son takes his father's wife. 587 768

Generally a young widow lives with a brother of her husband and it is only when there are no brothers living that she takes a lover from an unrelated, or distantly related, lineage. Tradition, good form, and threat of divorce, are powerful sanctions to conformity in this respect, though these influences are not so strong in the case of a half brother as in the case of a full brother, for a father's son of the dead husband has not the same claim on the services of the widow as a mother's son. Indeed, I was informed, among the Eastern Nuer especially, that a clear distinction is made between full and half brothers in respect of widows. After the death of a paterfamilias the children of each of his wives often live as largely independent economic units. If the mother is alive she cooks, 587 768 593

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587 768 593 milks the cows, and performs other domestic services for her sons. If she is dead and her eldest son is married his wife acts as a cook, housekeeper, and dairy maid, for her husband's brothers and sisters. Unmarried youths are then dependent on the wife of a full brother for daily necessities and if he dies and his wife does not consent to live with one of them they lose not only a sex-mate but also a housekeeper, cook, dairy maid, and gardener. They therefore strongly object to her going to live with a lover outside their village. If they are on good terms with their half brothers they will not resist her desire to live with one of them but will group themselves around the half brother whom she has chosen to live with, and will share his byre and enjoy the services of their dead brother's widow in his homestead. I was told that if they are not on good terms with their half brothers they may object to the widow living with one of them and may tell her that if she refuses to live with a full brother of her husband she had better take a lover outside their kin and bear children to the dead husband by a stranger. Occasionally a widow lives with her husband's sister's son.

The very limited control of brothers over the widow of one of them is seen in domestic facts rather than in legal theory. In fact many Nuer widows do not live with kinsmen of their dead husbands. Among the Eastern Nuer it is hoped and expected that a young widow will consent to live with one of her husband's brothers or sons and her husband's kinsmen try to persuade her to accept this arrangement; but it is rare for them to force her to choose between divorce and leviritic marriage and, if she declares firmly at her husband's mortuary ceremony that she will not live with one of his kinsmen, they permit her to take any lover whom she chooses. She then goes to "Give birth in the bush" (*dieth dor*), as the Nuer say. This means that she either continues to occupy her dead husband's homestead and there cohabit with one of the villagers, or that she leaves the village and goes to live as concubine to a stranger elsewhere. [848] [617] Her husband's people permit her to take this course because all the children she bears are their children, being counted as sons and daughters of her dead husband. Her husband's people have legal rights over the children and may take charge of them in which case the mother, when she is old and past child-bearing, will probably return to her husband's home to be with her grown-up sons. "When a widow who has gone to live with a stranger is old and can bear no more children she will cease to wander and will return to her husband's people and settle there with her children."

Among the Western Nuer the kinsmen of a dead man insist that if his widow has not borne children, or has borne only one child, she must live with one of them. If she refuses they may claim back their bride-cattle [586] i.e. divorce her. If she has borne one child they leave six head of cattle with her parents to retain control of the child and to affiliate him to their lineage. But if she has borne two or more children to her dead husband his people cannot claim back their bride-cattle if she refuses to live with one of his brothers. *Ghok te joldien ka nath caa ka de lony*, "Cattle which have children on their backs cannot be returned".

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The attitude of the kinsmen depends largely on the widow's behaviour. If she refuses to live with one of them but consents to remain in their village, as a member of their *gol* or homestead, and there bear children to her dead husband by a man who is not of their kin they cannot easily find fault with her, and even if she has not borne her husband two children they are unlikely to divorce her for the children she bears are not only legally of their kin but are born amidst them and reared by them.

A widow is always asked at the gathering of her husband's kinsmen at his mortuary ceremony, on "*the day of evil*" (*cang gidou*) when they purify the mourners and send the ghost away from them, whom she wishes to live with. I was told that if she refuses the sons and brothers of her dead husband they ask her *Cobe, guri bi wa law dar bis bi law ciang?* "O woman do you wish to become a concubine away from the village or to be a concubine at home?" A Nuer told me that on such an occasion *Cok me kare wiic yar be lar* "*Gham gen ca be wa law gwadh diedow, Me ca gol cuada gar, ba law gaikun*", "A woman who is not a fool will say, 'I will not seek a lover in another place. Though I do not want a son of my husband I will take a lover in your home'". She will then cohabit with a member of her husband's village, maybe one of his more distant male kinsmen, maybe a villager of a different clan. Everyone is satisfied with this arrangement, for she still remains a member of their *gol* and her lover is a member of their village and he not only begets children for them but also becomes the protector and bread-winner of the surviving members of their dead kinsman's family. Sometimes the lover is not a member of the dead man's village but is a man of a neighbouring village who visits the widow there from time to time to cohabit with her and assist her in horticultural labour.

Widows who decide to leave the homes of their dead husbands often return to their own people and take lovers in the villages of their brothers. Thus, as will be seen later in the charts and diagrams referring to the village of Nyueny, we often find matrilocal and patrilocal residence side by side owing to the return of widows, bringing their children with them, to the homes of their kinsmen. It thus often happens that children are brought up among their maternal relatives.

Often widows neither remain in the homes of their dead husbands nor return to their kinsmen, but go to live with lovers, sometimes in different districts and even in different tribal areas. If their children by their husbands are small they may take them with them so that during childhood they are members of the households of the lovers of their mothers. These men act as foster-fathers to the children.

It is impossible to say in advance which course a widow will pursue. Much depends on the character and social position of the husband's kinsmen and upon the strength of kinship sentiment among them. If there are full brothers of the dead man they may consider it their duty as well as their privilege to retain the services of "their wife", especially if she is young and they are unmarried. If there are only half-brothers of the dead man and still more if there are no brothers at all but only cousins, they have less control over the widow and less sense of obligation to the

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dead, so that they may view with equanimity the departure of the widow and her children, having no feelings of close parentage towards the sons and being assured that they will receive whatever bride-wealth is their due on the marriages of the daughters, wherever they may be brought up.

Most depends upon the decision of the widow herself (*riet cak*). If she determines to live away from her husband's village with a stranger his kinsmen warn her that any children she may bear are the children of her husband and that one day they will bring them to their father's home. Among the Eastern Nuer, only if she does something that deeply offends them will they divorce her. Among the Western Nuer they may divorce her if she has not borne her husband two children but how often this is done I cannot say.

Occasionally, I was told, a man directs (*nap*) from his deathbed that a certain kinsman is to live with his wife. It is difficult for a woman to defy such an injunction because Nuer believe that if she does so the ghost of her husband will haunt her and she will cease to bear children or her children will die.

A widow who lives with a stranger after the death of her husband is called *cak ma lak* and a child born of such a union is called *gat lake*. The children of a widow wherever they are born, or by whomsoever begotten, count as children of her dead husband, the man to whom she was married by payment of cattle, whether she was married to him in his lifetime or vicariously after his death. If the husband dies, or was already dead before his marriage, the actual configuration of the household may alter but the formal structure of the family remains the same. Indeed the family may never be a group of people with real interrelations because the husband and the father may have died many years before his marriage to his wife and the birth of his children. Among Nuer the pater is the husband to the mother. His legal fatherhood is defined by his status to the mother of the children and not by his physiological functions.

A *cak ma lak* is translated in this paper as "widow-concubine" for she is living simply as a concubine to her lover and he has no legal rights over her. He cannot compel her to live with him and cannot claim compensation if she commits adultery. He has no legal control over the children who can be taken away from him by her husband's kinsmen whenever they choose to remove them. His position is thus very different from that of a man living with his dead brother's wife. If she leaves him he can divorce her and if she commits adultery he can obtain redress. Moreover, he has legal control of the children during their minority and no one can take them from him as he stands in the place of the pater.

The group that results from the union between a man and a widow-concubine when the children are born by the concubine to her lover is a natural family which stands in what is sometimes glaring opposition to the legal family. The corner-stone of the natural family is the genitor who is acting as husband and foster-father. The corner-stone of the legal family is the dead husband and pater. According to circumstances the position of the genitor in a household of this kind may be precarious or his relations to members of his natural family may approximate to

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those of a pater towards members of a legal family. It must be emphasised that while the natural family is not a legal family the position of the genitor is socially recognised in a number of ways and that the natural family is often a group of persons living in a common household and cooperating in economic and other domestic undertakings. Widow-concubinage is not a purely biological union nor is the natural family a purely biological group. 587 593

Sometimes a widow elects to live with a clansman of her husband. In this case Nuer speak often of his relationship to the widow as leviritic marriage but this is by courtesy and his legal position is not much better than that of a totally unrelated man would be. I only speak of leviritic marriage, therefore, when it is a brother or son of the dead man who takes his wife.

The simple legal family is not contained in the structure of the natural family in the way it is contained in the structure of ghost-families and leviritic families, and the natural family cannot be regarded as a variation of the legal family, because, whereas in ghost-families and leviritic families the legal representative of the pater is the foster-father, and maybe the physiological father, of the children, in the natural family the legal representative of the pater is not the physiological nor entirely, if at all, the foster-father of the children. In fact, as we shall see later, there may be a struggle between the interests of the natural family and the interests of the legal family, as represented and expressed by the legal representative of the pater.

It will have been seen that the role of a father among the Nuer is often split and different parental functions are performed by different men. The man who was married to the mother of children at the time of their birth we may call the pater or legal father. The man who begot the children we may call the genitor or physiological father. The man who who acts as protector and bread-winner to the household of which the children and their mother form part, and who performs all those intimate services towards the children which are generally associated with the status of father, we may call the foster-father. I refrain from calling the pater the sociological father because all the men who perform these different functions receive social recognition.

When children are born in the union of simple legal marriage the same man is pater, genitor, and foster-father. When children are born in the union of ghost-marriage or in the union of leviritic marriage one man is the pater, and another man is both genitor and foster-father. When children are born of a widow-concubine, the pater is her dead husband, the genitor is her lover, and the part of foster-father is played in early childhood by her lover, or lovers, while in later childhood and in adolescence it is often played by a kinsman of the pater. 611

IV

588 848 611 593

In true marriage, ghost-marriage, leviritic marriage, and widow-concubinage a mother is always legally married and all her children belong in virtue of her marriage to her husband's lineage and clan. But there are

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husband towards them. One can only know by enquiry. In no way is their behaviour stigmatized as immoral. If a woman prefers to live as a concubine than as a wife that is her affair. Where they are in a worse position than a wife is that they cannot expect the same support from their kinsmen in disputes with their lovers as a wife can expect from her kinsmen in disputes with her husband. What a wife may demand as a right a concubine can only ask as a privilege. This disability is compensated for by the independence they enjoy. They are free to move as they please and to have love affairs whenever and with whomsoever they like. Those unmarried concubines whom I have known personally have been women of strong character who value their independence and do not desire matrimony. They refuse to be bullied by parents or husbands. Indeed Nuer realise that they are temperamentally unfit for normal marriage and consider that they are unlikely to settle down till they are old. 515

The main difference between a widow-concubine and an unmarried concubine is that a widow-concubine has had cattle paid to her kinsmen and these cattle are still "on her back" (*to ghok johde*), as Nuer say, whereas an unmarried concubine has never had any cattle paid to her kinsmen, save those as a fee to affiliate her children to the lineage of her lovers. If she was once married her bride-cattle have been returned. *Kea e cok ne cas ghok lony joh jaade,* "A *kea* is a woman from whose back cattle have been returned". When cattle are paid to make a child of an unmarried concubine the legal child of the man who begot him they are a legitimatization fee and not bride-wealth. The payment neither gives the father control over the mother nor a right to other children that she may bear by him or by any other man. 514 587

Sometimes instead of legitimatizing his child by payment of a fee a man marries the mother and, by payment of bride-wealth, not only legitimatizes the child but also any future children whom she may bear by him or by any other man. A *cok ne kea*, an unmarried concubine, then becomes a *cok pany*, a true wife. When a man marries a concubine he does not pay as many cattle as he would have done had he married her as a maiden. He is said to pay some ten to fifteen beasts instead of from twenty to thirty. 598 513 595

A man only marries a concubine when he is certain that she wishes to remain with him. For sometimes a girl becomes a concubine, not through unwillingness to settle down to married life, but because her parents have forced her to marry a man whom she detests and whom she has provoked to divorce her. A girl may even run away from home in despair when faced with marriage to a man she dislikes, and live with a lover in a different tribe. Some girls are betrayed by youths who have courted them and refused to marry them when pregnant, though, in my experience, this is very rare because a youth is generally glad to marry a girl who is in child by him. In this case the girl becomes a *kea* but she will not remain one, for she will be married to another man who becomes the pater and foster-father of the child though he is not the genitor. Men do not object to marrying young women who have borne a single child but they are unwilling to marry older women who have already borne several children. 511 581

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have been paid in compensation for adultery with the wife of Yang". The same verb is used for paying compensation for intercourse with an unmarried girl e.g. one says *Bi yang rok*, "You will pay a cow" for this action. *Rook* also means to legitimatise a child born of an unmarried concubine. The genitor says *Ca gaida rok*, "I have legitimated my child by payment of a fee".

To describe sexual relations outside the union of marriage Nuer use the verb *lum*. The use of this word is a polite way of referring to sexual intercourse and could also be used to describe marital relations if one were to refer to intercourse between husband and wife. But it would be very unusual to refer to it. The word *lum* is used to describe the social relationship of a man to an unmarried concubine or widow-concubine, though it is a slightly coarse expression when used in this connection, and in the presence of related persons one would preferably say of a man and a widow *Mathke pi kel*, "They drink water together". *Lurɔ* is also used to describe the courtship of a girl by a youth and refers to mere flirting or sexual intercourse alike. In fact it covers all relations between the sexes from casual intercourse to permanent cohabitation, though it has generally the sense of extramarital relations.

The rules of exogamy which obtain for simple legal marriage apply also to all the different unions described in this paper. A man may not cohabit with a woman whom he may not marry.

VI

The test of the nature of a procreative union is in the division of the bride-cattle of daughters born of it. When the pater is alive he receives the "cattle of the father" and "the cattle of the mother". If he is dead they belong to his sons (the bride's half and full-brothers). The genitor in ghost-marriage and leviritic marriage has no legal claim to the "cattle of the father" or the "cattle of the mother". They belong, at any rate in theory, to the bride's brothers. The genitor in ghost-marriage stands in the place of the pater with regard to the bride's brothers as well as to the bride herself so that there is no need to define ownership of the bride cattle very clearly, for in any case they join his herd. When the genitor has begotten the bride in leviritic concubinage, division of the cattle may be more complicated because the bride may have full or half brothers begotten by her dead pater, or by other men after his death. I discuss these matters in a preliminary manner here because they will be elaborated later.

The genitor in ghost-marriage and in leviritic marriage may always demand a cow for his services for having begotten the bride. Similarly a man who lives with a widow-concubine may demand a cow on the marriage of her daughter on the grounds that he has begotten her and, if he acted as her foster-father, he may claim another two or three head of cattle for having acted as bread-winner to the family during her infancy and adolescence. He says "I cut meat for them" in reference to the fact the children have been nurtured by his labour as herdsman, gardener, and hunter.

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Nyawany ♀—Kong ♂ who is also dead. She bore him Tang ♂ and Gai ♂. Lately he has married Nyarieh ♀—Cang ♂ by whom he has an unnamed child. He has an unmarried concubine who was temporarily absent during my visit. She has borne him two sons, Twang ♂ and Kong ♂. Cattle have been paid to legitimatize Twang ♂ and more cattle will be paid to legitimatize Kong ♂.

Karlual's brother, Puoyuan, lives in his byre, and his sister's sons, Nhial ♂—Rainera ♂ and Golnak ♂—Rainera ♂, spend most of their time there and house some of their cattle there.

Homestead No. X. Meat ♂—Col ♂. He is unmarried. In his byre lives his half-brother, Wec ♂—Jany ♂, who has married a wife to the name of one of his father's brothers. She has borne him Korwai ♂ (dead), Nhial ♂, Nyajuecni ♀, and Nyapuot ♀. As he has no cattle, he has sold his byre to Col ♀ of Homestead No. II, and as he is too lazy to cultivate a garden, his wife and family, to save themselves from starvation, live at her sister's home in another village. He wanders hither and thither and scrounges on other people. Another occupant of this byre is Meat's sister's son, Biliru ♂—Lam ♂.

Homestead No. XI. Jal ♂—Ngunjuk (brother of Col of homestead No. II). The two brothers live at a distance because their wives do not get on well together. His brother, Bol ♂, and his half-brother, Pan ♂, share his byre. Both are unmarried. Jal ♂ has married a wife to the name of his father's brother, Muong ♂—Ret ♂. This woman, Nyaluak ♀—Deng ♂ has bore him Cuong ♂ and Nyalia ♀. One of the huts in this homestead belonged to Jal's mother who died last year. See Diagram No. VII.

Homestead No. XII. Nyawal ♀—Col ♂. Her husband was Lam ♂ of the Ngvol clan. She bore him Rwac ♂ (dead) and Nyakwoli ♀. After his death she cohabited with Juan ♂ of the Jikul clan, by whom she bore Biliru ♂, Nyakuan ♀, Nyalieth ♀, Ghuth ♂, Bathu ♀, and Nyalita ♀. She is past child-bearing and does not cohabit with any man. Her cattle are housed in the byre of her brother Meat ♂, of Homestead No. X.

Homestead No. XIII. Nyading ♀—Kulang ♂. Her daughter, Nyamani ♀, was married by Tang ♂—Karlual ♂ to the name of Ran ♂, a brother of his father (though begotten by Kwenwar while Karlual ♂ was begotten by Jany ♂). Ran ♂ had died before initiation and his ghost began to kill Karlual's wives and children and had to be quieted by being married a wife. Nyamani ♀ lives with her mother, Nyading ♀, whose husband, Dak ♂—Jiong ♂, is dead. She bore Dak ♂ three children: Nyamani ♀, Nyaghok ♀, and Gai ♂. Dak ♂ by another wife begat Nyajaani ♀ who also lives in this homestead. Nyajaani ♀ was married by Pathol ♂—Nyaalbor ♂ of the Lual section and bore him a blind son who also lives here. She refused to live with her husband's brother when he died, so the cattle of her bride-wealth were returned. She was then married to another man and divorced by him. She now cohabits with Mokwac ♂ of Homestead No. XVI and has borne him a son.

Homestead No. XIV. Loc ♂—Jany ♂. He married a wife, Can ♀—Giling ♂ of the Reng section of the Jikany tribe, to the name of his dead

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sections, whom he has recently wed. She still lives with her parents and has not yet brought the infant daughter she bore Nhial to his home. At one time Nhial cohabited with Nyadiang of Homestead No. XXI. The byre in his homestead has fallen down and will soon be rebuilt. 592 596

Homestead No. XXIV. Nyadhiau ♀—Wal ♂, a widow of Galuak ♂—Thol ♂. She bore her husband Tap ♂ who lives in the homestead of Dhoal ♂ of Homestead No. XX. Dhoal ♂ now cohabits with her and she has borne him Gai ♂, Puot ♂, Nyagwir ♀, Laoth ♂, Nyakwoli ♀, and a female infant. This cohabitation would be regarded by Nuer as leviritic concubinage because Galuak ♂ and Cuc ♂, the father of Dhoal ♂, were both sons of Thol. 592 587

Nyadhiau's mother, Nyaloral ♀, a very old Baggara Arab captive, lives with her. [227]

Homestead No. XXV. Kwol ♂—Kwoth ♂ (Kwoth ♂, Galuak ♂, and Cuc ♂ were brothers). Kwol is unmarried. His mother, Nyamani ♀—Kolango ♂, a Bor woman, and his brothers, Buth ♂ and Duoth ♂, and his sister, Nyalinh ♀, live in the same homestead. He shares his cattle-byre with Nhial ♂, of Homestead No. XXIII, and two sons of Dit ♂, Rwot ♂ and Werjuk ♂ (Homestead No. XXVI). 592

Homestead No. XXVI. Nyaluak ♀—Yoah ♂, widow of Dit ♂—Bicuk ♂, to whom she bore Rwot ♂, Yangdeah ♀, Nyakur ♀, Nyampath ♀, and Werjuk ♂. After her husband's death she cohabited with Carou ♂—Gwec ♂ of Nyang village to whom she bore Nyibol ♀, Ging ♀, and Nyadueth ♀. She is now past child-bearing. She is a noted diviner and magician. The byre of this homestead fell down last year. 592 588

The information collected about matrimonial conditions at Nyueny is not full enough to allow a very fine classification but a crude analysis in the form of a summary may be presented. There are thirty three women in the village who have either been married or have borne children. The number includes only women living in the village as their normal residence and not such women as Nyandol ♀—Kwenwar ♂ even though she has declared her intention of settling there; nor the wife of Nhial ♂—Rainen ♂ because she has gone back to her own people and he is almost certain to divorce her; nor the unmarried woman who was living as Nhial's concubine because she was a bird of passage. I have not counted women, recently married by men of Nyueny, who are still living in the homes of their parents. These thirty-three women are living in the domestic conditions shown in the first column. 583

The second column presents an analysis of all the different types of union to which the thirty-three women are known, at one time or another, to have been partners. The second column does not pretend to the accuracy of the first for I did not attempt to record the complete domestic history of each woman, though much information about them was collected in the course of a general enquiry. It is hoped, nevertheless, that the second column will be of service in correcting any distortion in the first, for, except for unmarried concubines who have not been married and afterwards divorced, all the women have at one time lived in the union of one or other form of marriage. I have not attempted to estimate the number

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brought them up and of his old kindness and will join him again. The bond of love will never be entirely broken. 588

If a genitor wins the affection of his sons in this way he may be able to keep them with him, especially if he and the kinsmen of the sons occupy the same village. Thus Galuak ♂—Diet ♂ lives with his genitor although his mother and his legal brothers are living at the other end of Nyueny. Galuak is now a man and can decide for himself in which homestead he wishes to reside and as he lives in their village his brothers do not object to his remaining with his genitor. Barunyai is a very straightforward man and his son knows that he will be able to marry a wife from his genitor's herd when he is old enough to do so. His interests need not therefore conflict with his affections. His relations with his legal brothers are harmonious but "they have the business of cattle between them. That is all", i.e. they have the legal status of brothers and cattle of the bride-wealth of kinsmen are divided accordingly, but they do not otherwise behave as brothers. 428 593

Nevertheless, if I were to bet on whether a man remains finally with the people of his pater or the people of his genitor I would always back the pater's side. Most experienced Nuer take this view. Thus when I consulted Karlual ♂ about the relation between his brother Panyuan ♂ and the children of Nyamani ♀ he gave it as his opinion that Panyuan ♂ might keep his children by winning their affection and by retaining the goodwill of their mother though he considered that it was most unlikely that he would keep them, and added that if the family wished to move Panyuan ♂ would be unable to prevent their departure.

He quoted his own case in support of this view. He at one time lived with Mer ♀, the widow of Nyong ♂—Bidiit, by whom he begat two children, Nhial ♂ and Nyaluk ♀. He brought them up in his home and Nhial ♂ was even initiated there, but one day in his absence the widow departed, her children with her, to Rengyan country to the home of Dang ♂, her dead husband's son by another wife. Nhial ♂ is most unlikely to join Karlual ♂ because the only reason for doing so would be a quarrel with his half-brother Dang ♂ and since he has his own herd the most frequent occasion for quarrels between brothers is lacking.

Karlual also at one time cohabited with Nyapini ♀—Wic ♂, the widow of Bup ♂—Thol ♂. She bore Karlual ♂ two children Gaac ♂ and Nyatop ♀, before she was killed by lightning. Both children are now living with their pater's kinsmen and Karlual has no hopes that they will ever come to live with him.

Karlual is himself a *got laka* (son of a widow-concubine) and though his own history illustrates the circumstances in which a genitor may retain the children of a widow-concubine it also shows how powerful are sentiments of kinship even when conditions are least favourable to their growth. 587

Kwenwar ♂—Cueny ♂, an aristocrat of the Lang tribe married Nyajal ♀. He died in a year of famine shortly after his marriage and his wife came to live with a man of the Juak clan in Karlual tribe. This man, Jany ♂, was for a time ignorant that Nyajal ♀ was married and thought 588 428 593

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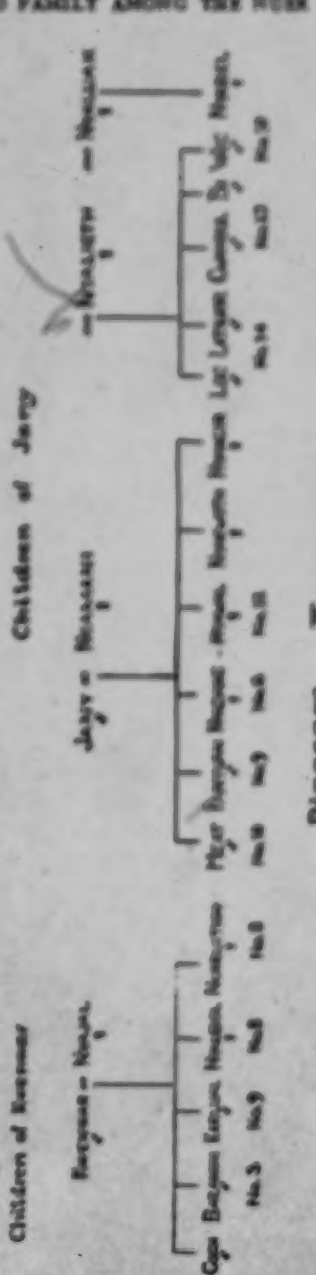
she was an unmarried concubine. By her Jany ♂ begat Karlual ♂, Gogh ♂, Boranyai ♂, Nyaudiel ♀, and Nyaruithni ♀. Jany also married a wife, Nyamani ♀, to the name of his dead father, Col ♂, because he thought that his father ought to have a second wife. By her Jany begat Nyadang ♀, Nyawal ♀, Meat ♂, Panyuan ♂, Nyakweth ♀ (married in Lek country), and Nyangir ♀ (married in Jikany country). Jany ♂ also had relations with an unmarried concubine Nyalieth ♀, by whom he begat Loc ♂, Lathjor ♂ (dead), Gwanbul ♂ (dead), Bi ♂ (lives in Lek country), and Wec ♂. After Nyalieth ♀ bore her first child, Jany ♂ paid some bride-cattle to her kinsmen and the ceremony of invoking the cattle was performed to legitimatise the union. Jany ♂ also married Nyaluak ♀—Gai ♂ by whom he had a daughter, Nyabiel ♀. On Jany's death his son, Karlual, cohabited with this woman but she died at his home without having borne more children. Karlual ♂ brought up her daughter but she died recently while betrothed to a Jikany ♂ tribesman. When Jany ♂ died he was betrothed, but not married to Nyading ♀—Thiep ♂. Following the usual practice this woman was therefore married to his name after his death (*Cae kuen jokde*) by one of his sons, Gwanbul ♂, to whom she bore Jor ♂, Nyagaagh ♀, Nyangir ♀, and Nyabilieu ♀. She died last year, Gwanbul having been killed in war some years earlier. Jany ♂ lived originally at Puic but when the fighting between the Riaagh and Doang sections compelled the Riaagh people to move to Lual country, Jany came with them.

Diagram X



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In the case of Nyajel there were a number of circumstances highly advantageous to the genitor of her children. Kwenwar had died without leaving brothers or sons behind him, his other wife and her son having died also. There were, therefore, no close kinsmen of their pater with strong enough feelings of kinship towards Nyajel's children to claim their custody. Absence of close paternal kinsmen also meant that there was no magnet to draw the sons away from their genitor, for a youth who might desert his genitor and foster-father to take up residence with a full brother of his pater would not desert him to reside with a more distant kinsman of his pater, for this man would not feel that he stood towards him in the place of a pater. Moreover Nyajel remained with her lover and did not wander from place to place as some widow-concubines do, so that the group had all the stability of a simple legal family. 587 588 425 595

It was therefore possible for Jany to bring up his family free from outside influence. When Nyajel's eldest daughter was married Jany made a declaration at the marriage talk: "These are the children of my loins and I brought them to manhood. It shall not be said that they are the children of any man but Jany. Therefore I shall take as my portion of the bride-cattle a cow and a calf and an ox for my loins and, besides these, a cow of the spirits shall be mine. And by this it shall be known that the children of Kwenwar have a right (*cuong*) in the cattle of my daughters' marriages. But if I do not receive a cow of the spirits they will have no right in the cattle of my daughters' marriages. They shall be counted the sons of Kwenwar and not the sons of Jany. But let the people in the byre hear: they are the sons of Jany and have rights in the cattle, for I will take a cow of the spirits, and no man shall point to them and say 'They are born of a widow-concubine' (*ce ka de nyuach lak*). 587 588 428 595 431

This speech of Jany, recounted to me by one of his sons, contained the following implications: I begat these children and brought them up and the kinsmen of their pater have taken no interest in them. Therefore, as begetter and foster-father of the girl about to be married I want as my share in the bride-wealth not only a cow and its calf and an ox for having begotten and nurtured the bride, but I also demand a cow to be dedicated to the spirits of my lineage to show that I am really her father. If my demand is accepted then I agree that in the marriage of my daughters by my other wives the children of Kwenwar whom I have begotten shall have the same rights as my own children in their bride-cattle. When the bride-cattle are being divided we will not regard them as Kwenwar's children but as my own children. Thus we shall give them rights in the bride-wealth (*cuong ka*).

Normally, the "cow of the spirit" would go to the pater, or his heir, as a dedication to the spirit of their lineage so that when Jany asked for it to go to him to be dedicated to his lineage he was suggesting that his status should be recognized as that of pater rather than that of genitor. In law the sons of Kwenwar need not receive any cattle of the bride-wealth of daughters of Jany by other women because the "cattle of the father" would go to the legal sons of Jany and the "cattle of the mother" likewise. The recognition of Jany as a kind of pater in respect of bride-wealth

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587 would therefore be balanced by the acceptance of the sons of Kwenwar as
588 though they were the sons of Jany in division of bride-wealth.
428 The children of Kwenwar and the children of Jany are figured in
593 Diagram No. X. As previously explained, the persons shown there as
431 the children of Jany by Nyamuni are legally the children of Col, the father of Jany. However, in the village they are always known as *gaat Jany*, "the children of Jany" and their womenfolk always speak of *kon naa gaat Jany*, "we, the womenfolk of the sons of Jany". At the present time the distinction is entirely one of nomenclature since Jany married Nyamuni in ghost-marriage. Likewise in the same diagram the children born of Nyading who was spouse in ghost-marriage to Gwandol, a son of Jany, who took her in marriage to his father's name, are omitted. For we are now treating of bio-social actualities rather than legal configurations and these actualities can be understood better if all legal configurations other than those strictly relevant to the particular problem being discussed are omitted.

587 How strong are the ties of legal affiliation where the pater belongs to one
588 clan and the genitor to a different clan may be seen in a difficulty that arose
428 between the sons of Kwenwar and the sons of Jany during my residence
593 at Nyueny. The sons of Kwenwar said that as several of their wives and
578 children had died in recent years they intended to move to Lang country, to the home of the kinsmen of their pater. The sons of Jany are opposed to this move. They say that they have always accepted the sons of Kwenwar as brothers, and that they have always treated them as such in division of bride-wealth. They have always given them the support which brothers are supposed to render to each other. They now recollect with bitterness all the bride-cattle of their sisters that they have so generously divided among the sons of Kwenwar, for on the marriage of each of their sisters the sons of Kwenwar have received a share of "the cattle of the father" when it would have been to the advantage of the sons of Jany to have treated them as members of a different family and lineage, a social distinction which they are now putting forward in favour of their contemplated move.

Panyuan ♂ told me that if the sons of Kwenwar move this principle of share and share alike will be abandoned and that in future each of the two legal families concerned will insist on their strictly legal rights (*cumpɛ*). The sons of Kwenwar will no longer profit by their generosity. They may ask for what is their legal due but will receive no more. According to Nuer ideas they might claim a cow or two on the marriage of Jany's own daughters even if they could not insist on their claim. But, in fact, they have received the major part of the bride-cattle of each daughter, because, being the eldest sons, they were the first to marry. Panyuan ♂ felt very sore at their talk of departure and recounted to me in detail all the cows and oxen they have received from the sons of Jany.

587 Baranyai ♂ is the most anxious to move. Panyuan ♂ told me that
588 Baranyai ♂ thinks if the sons of Kwenwar go to Lang country they will be
428 among their true kinsmen, but that they will find that the sons of Jany
593 are their real kinsmen when they have lived there a short time. They

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will soon discover that no one in their pater's home cares about their welfare. Then they will return to their brothers, the sons of Jany. "For a man thinks that he will profit himself if he goes to a distant country but there comes a time when he remembers the place where he was born and his heart yearns for the place of birth and he returns there".

If Barenyai ♂ departs Karbiel ♂ will certainly accompany him and will take his son, Yang ♂, with him. His other son, Gai ♂, would like to accompany them but he is looking after the herd of his aunt, Nyarolthai ♀ and, although she is a daughter of Kwerewer, she refuses to leave the village so soon after her daughter's death by lightning. If her brothers go she will probably follow them in the next two or three years and then Gai will accompany her. Possibly Gogh ♂ will join them also.[1]

Thus, although in everyday speech, all these people call themselves children of Jany and not children of Kwerewer so much so that Karbiel could tell me the antecedents of Jany in full whereas he knew very few of the antecedents of Kwerewer yet they belong to distinct lineages, clans, and even tribes. Though people have always regarded them as a single family, yet they belong to two distinct families, and not only in a formal legal sense, for we see how strong an influence legal descent may be in influencing behaviour when these sons of Kwerewer wish to depart to the home of a pater whom they never saw and of whom they knew very little and to reside among kinsfolk who have shown scant interest in their concerns.

For had Kwerewer close kinsmen they would have visited "their sons" and might have taken them from Jany and brought them to their father's home. At least they would have got to know them so well that when they grew up they would have known that they would receive a welcome from familiar kinsfolk and would receive the full privileges of close agnatic kinship should they come to live among their paternal uncles and cousins. But the surviving kinsmen of Kwerewer were distant kinsmen and they only visited Jany and his sons when cattle were due to them on the marriage of his daughters by Nyajal. Consequently they were brought up as sons of Jany and to regard the Jusk clan as their own people.

While Barenyai ♂ talks of going to his pater's country he asserts a principle of paternity that he denies when he says that he wishes his natural son, Galuak ♂, to accompany him. Though Galuak's legal brothers, the sons of Dit ♂, have not objected to his living with Barenyai it is village opinion that they will strongly oppose his leaving their village. They cannot compel him to remain but they can use the strong appeal of kinship to persuade him. Thus Yang ♂, of Homestead No. XIX, said to me about Galuak: "His mother is with us. She is the wife of our people. He will remain with us and build himself a byre and be among his father's kinsmen". Yang said that Galuak will not live with his brothers but will remain in their village among the Riagh people who married his

1 Gogh ♂, who is married, lives in the neighbouring hamlet of Nyathiang, of the Riagh lineage. He and his brothers lived here after leaving their original home at Puic. When his brother came to Nyueny, Gogh ♂ decided to remain at Nyathiang for the time being.

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587 588 921 593

mother. I expect that if Baranyai moves Galuak will accompany him but that, if Baranyai does not return to Nyueny, Galuak will one day by himself.

Nuer say that it is always the same with sons of widow-concubines. One day a longing to join their kinsmen overcomes them and they leave their genitor. When Nhial was talking to me about this subject he said: "Look at the sons of Gwanbul, Thak ♂, and Thor ♂, whom he begat by Nyanor ♀—Let ♂, the widow of Doub ♂—Mayen ♂. The sons of Jany brought them to manhood and now where are they? Have they not gone to live with their own people in Jikany country? When they visit the brothers of their father (genitor) is it not to beg for a gift?"

I have mentioned that the future residence of the sons begotten by Panyuun will largely depend on the attitude of their mother. Also in Galuak's case the fact that his mother will remain at Nyueny among her husband's people is likely to prove a decisive factor in persuading her son to return there also. A genitor has small chance of keeping the children if he cannot keep the mother. A case in point is that of Juan ♂. Nyawal ♀ (Homestead No. XII) was married to a Ngwol man called Lam ♂ to whom she bore two children. On her husband's death she went back to her own people, the sons of Jany, and in their village cohabited with a Jikul man named Juan ♂ to whom she bore six children. Juan ♂ is now blind and lives among the Jikul because Nyawal ♀, by this time too old to bear more children, quarrelled with him as widow-concubines so often do with their lovers, according to the Nuer, for "when a widow-concubine has finished child-bearing she has no more use for her lover". As his children have been brought up by their maternal uncles they remained with their mother.

In this case the weakness of the natural family is well shown, because if Juan had been their legal father, or even a legal substitute for their father, the sons at any rate would certainly have followed him and left their mother. As it is they feel that their genitor's people are not such close kinsmen as their maternal relatives, for relatives of a genitor never acknowledge his children as true kinsmen, for they belong to the lineage of their pater. People say that since Juan is now blind he will come to live with his sons at Nyueny because he is very devoted to them, and they to him. Bilieu, the eldest son, was clearly fond of his father and it was touching to see his younger brother, Ghuth, leading his blind father from place to place when he visited the village.

A genitor is by no means an unimportant person in Nuer society. Even when he has had little to do with his children he is united to them by a mystical bond. If he feels ill-disposed towards them he may by mere disposition cause them an injury. In very favourable circumstances the children may be initiated and married from his home and have filial regard for him alone. If circumstances are not favourable and his sons desert him they will often visit him, sometimes spending a season at his home. Whichever group a youth joins, his pater's, his genitor's, or maternal uncle's group, the members of the other groups will not refuse to help him if he is in difficulties, for even with his genitor's people he has

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a kind of kinship. Very often when a man has no legal children of his own he will join his natural children in their pater's village, as it is suggested that Juan will do and as Lusk, the father of Rainera and Dol (Homestead No. VI), did. 587 588 423

A youth often asks his natural father for a gift. In fact *lieu*, the begging of a gift, is considered highly typical of this kind of father-natural son relationship, particularly when the son wants to marry, for he may then ask his father for a cow. I was told that "The father will not care to refuse his request for it is his own son who makes it". If he can afford it he may even give him two cows. The son is not demanding a right (*cuang*) but a privilege by an appeal to affection (*lieu*). 593

A man respects the totemic and other spirits of his genitor and he will not marry into his genitor's lineage. If the bond between a man and his natural son is a very strong one they may act towards the kin of their genitor on the same pattern as they act towards the kin of their true agnatic kinsmen, e.g. in assisting them to pay compensation for homicide and to pay bride-wealth. Natural descent is also recognized in performance of ritual. Thus at a ceremony I witnessed at Nyueny in honour of the ghost of Yoah (Homestead No. VIII), Dol sacrificed a goat. Dol was a natural son of Lusk who was related to Yoah.

XI

Something has been said about the relations between sons and "fathers" in simple legal marriage, in ghost-marriage, in leviritic marriage, and in widow-concubinage. It remains to say a few words about the relations between a *gat kraka*, a son of an unmarried concubine, and his pater (his genitor becomes such after he has paid a legitimatization fee). His position is very different from that of a *gat laka*, a son of a widow-concubine. "A *gat kraka* is your own son". So long as you are kind and generous to the boy he will not desert you, for you are both his genitor and his pater and if he deserts you he has no other "father" to whom he can go. Thus Karlual (Homestead No. IX) has two natural sons: Twong and Kong. At present they are living with their mother in Rengyon country. When Twong said that he wanted to go to his mother, Karlual without demur told his grown-up son, Tang, to take him to her, knowing that the boy would soon return, "Because he is old enough to know his father and when he returns he will not leave his father, for when his father kills an animal he will keep meat for him to eat and when food is served in the byre he will call his little son to eat with him". When I asked Panyuan whether the mother would also return he said: "She has gone to her brother's house and there another man will cohabit with her and if she has children by him she will remain with her children. But if she has no more children one day she will come back to Karlual, so that she may be with her sons." 588 593

Nevertheless, neither a *gat laka* (son of a widow-concubine) nor a *gat kraka* (son of an unmarried concubine) are so strongly bound to their genitors as a *gat ghok pany* ("a true child of cattle" i.e. a child born in the union of simple legal marriage). If a boy born of an unmarried con-

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XII

I have given a description of different types of union found in Nuerland and of the groups that arise from them. I have illustrated each type mainly by quoting examples from the village of Nyueny. I could have drawn on villages in other parts of Nuerland.

Some remarks of a general nature were made in the early part of this paper. Further remarks are given in conclusion but I wish to make it clear that I mention briefly only a few sociological results that arise from such "matrimonial" conditions as those I have described and that I merely sketch some of the problems that lie in the material we have considered.

One important result of widow-concubinage is matrilocal residence, temporary or permanent. I have discussed modes of residence elsewhere and here it is only necessary to show how they are affected by the prevalence of the various types of union which have been reviewed. In simple legal marriage the first child is born and weaned in its maternal grandparents' home and may be brought up there. But it eventually comes to live with its parents in the village of its pater and his kinsmen, for after weaning her first child a wife joins her husband in his village and there her other children are born. That is the normal procedure. In ghost-marriage it is the same. In leviritic marriage the children and their mother generally remain in the home of the dead pater. In widow-concubinage, however, as we have seen, the children are often born and live, at any rate for some years, away from the home of their paternal kinsmen. The children of unmarried concubines live, when they are small, with their mother, whether she remains in their father's home or takes a lover elsewhere. After a boy has been initiated he normally makes his pater's homestead his permanent home. These statements apply particularly to boys. There is less consistency in the case of girls, as already explained.

A glance at Diagram No. X shows how matrilocal and patrilocal modes of residence are found side by side as a consequence of widows cohabiting with lovers in the village of their brothers. "The daughters of Jany" live side by side with the "sons of Jany". Nyaruithni ♀ and Nyawal ♀ are widows living at Nyueny with their children, while Nyadol ♀ is about to join them. Not on account of widowhood, but for other reasons, Nyadang ♀ also lives here with her husband and family, so that four of the daughters of Jany are living with their children in the hamlet of their kinsfolk.

With reference to this matrilocal cluster Bilieu ♂—Lam ♂ said to me: "I live with Meat ♂ who is my maternal uncle, for he brought me up and I was initiated at his home. We share the same byre. He has one half of the byre and I have the other half. In the cattle-camp also we share the same wind-screen and tether our cattle side by side. My position is just like that of Galuak ♂—Rainen ♂. He shares with Panyuan ♂ and I share with Meat ♂".

Since they live in the village of their maternal kinsfolk these youths with the exception of the sons of Rainen ♂ whose father is resident in the

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589 591 611 551 village are given matronymics instead of patronymics. Thus at Nyueny one generally speaks of Bilieu ♂—Nyawal ♀ and Malith ♂—Nyaruithni ♀ instead of Bilieu ♂—Lam ♂ and Malith ♂—Rwacar ♂, though at the villages of their paters one would speak of them by their true patronymics. One even hears the sons of Rainen ♂, Nhial ♂ and Galuak ♂, referred to after their mothers' name as *gaat Nyadang* ♀, "sons of Nyadang ♀", because they live in the village of their maternal kinsmen. The same nomenclature is to be observed when a son of an unmarried concubine lives with his mother's people, e.g. Cuol ♂—Mer ♀ who was referred to overleaf.

562 Another point of importance which is very obvious from the facts related in this paper is that marital and domestic conditions among the Nuer indicate the high position of women in their society. The matter cannot be discussed at length here and I will only remark that the facts cited show how freely women move among the Nuer. We have seen that widows settle with lovers without hindrance, that many girls rear a family without consenting to marriage, and woman always take their small children with them when they change households, and that sometimes they even marry wives themselves.

611 The social principle of agnatic descent is, by a kind of paradox, traced through the mother, for the rule is that in virtue of payment of bride-wealth all who are born of the mother are children of her husband. Thus all the children of a woman may be children of a man whom their mother has never even seen. Or a woman may bear children by many men yet they all have one pater. Or, yet again, a woman may bear a child by a man to whom she is not married and to whom she never will be married, but this man is her child's pater by payment of a fee.

602 We see herein the fundamental principle that gives structural uniformity to, and thereby explains, the heterogeneous social elements isolated and described in this paper. I refer to the agnatic principle that is one of the most fundamental principles of Nuer social organization. It runs through the whole gamut of social relations, from ecological relations at one end of the scale to cosmological relations at the other end. This principle is not merely that every man must have a pater, and that he traces his descent through his pater, inherits from his pater, and succeeds to his pater's status. These are contained in the principle and are an expression of it, but, in our opinion, the agnatic principle among the Nuer is essentially the tendency of attachment to agnatic groups or lineages. By such attachment a man becomes a social being for his social personality is acquired from his attachment to these groups, from which he derives also, through mutual assistance, the means of existence and security.

At first sight many of the facts stated in this paper seem to be in direct opposition to this principle. Thus if we take the Jany (Kwenwar) cluster at Nueny it is evidently an aggregate of cognates and affines. The same social conditions can probably be found in every Nuer village. The underlying agnatic principle is therefore in glaring contrast to social actualities. But the actualities are always changing and passing while the principle endures.

584 make the best of it now. When the family of the girl are willing to talk the matter over, representatives of her lover's family discuss the marriage payment with them and try to agree upon a suitable price. Usually some arrangement is made, and the man makes as large an initial payment as he possibly can, following it up by other payments as he is able.

682 Everything may go all right until the baby is born. If by any chance the mother should die and her death be considered as caused by the birth of the child, the father of the child is held to have caused her death. And serious trouble is on again between the two families. If a member of her family does not kill her lover, he is fined for her death.

But if she lives and the baby lives, all is peaceful and they may live the proverbial happy life ever after.

595 Likewise, a man may have a wife whom he has married, and one or more whom he has not paid for but who are his wives in reality and the mothers of his children. He keeps a house for each, and they are often good friends with his real wife, although they are never called his wives.

Thus a man may have children by his several wives, and it is quite common to ask children of the same father if they have the same or different mothers. Or one may ask children of the same mother if they have the same father, especially if their mother is an inherited wife.

587 When a man dies his wife is inherited by his brothers or other male relatives. In case they do not want her, she may be returned to her father's village and the cattle paid back.

586 Divorce is not unknown in Nuerland, but it is usually caused by the lack of children. If a wife cannot bear a child, or fails to bring living children into the world, the

families; it is only in question of descent and inheritance that the difference is seen. It is the dead pater's name which will survive in genealogies. 588 [610]

Ghost marriages are arranged on behalf of brother, paternal uncles, maternal uncles and fathers (i.e. physiological fathers who are not also paters). A man of a senior generation is not allowed to marry a wife to the name of a kinsman of a junior generation because the man would be both vicarious husband to the woman and her father-in-law. A man never marries a woman to the name of his father's father or his mother's father since that was the duty of their sons. Only a kinsman takes a wife to the name of a dead man. Occasionally a woman marries someone to the name of a dead kinsman, and the wife so married would cohabit with a stranger to raise up children for the ghost.(1)

2. *The Levirate.* When a husband dies, the children his wife may subsequently bear are still counted as the children of the dead man. It is held that the woman should live with one of the dead man's brothers for she was married with the cattle of their kraal. Whoever inherits the widow does not marry her; she is still the wife of the dead man, and the man with whom she lives merely acts as genitor. Children born of the union regard themselves as their pater's family and inherit from him and not from their genitor. Leviratic marriage is different from ghost marriage. In ghost marriage bridewealth is paid and the marriage rites are performed by the vicarious husband; in leviratic marriage the husband has already performed these actions and the brother or other male kinsman inheriting the widow merely enters, as pro-husband, a family already in being.(2) 587 611

Tradition, threat of divorce and social pressure, all persuade a young widow to live with her husband's brother or with a son by a co-wife. She has a certain amount of choice among the relatives available. If she prefers to go and live with lovers and to 'give birth in the bush', all children born are counted as those of her dead husband, and his lineage has legal rights over them. Some widows return to their parents' village and live with a man there.

3. *Widow Concubinage.* A widow living with a stranger after the death of her husband, is called a *cek na lak* (widow concubine).(3) Her lover has no legal rights over her and cannot compel her to stay with him, nor has he any legal control over children born of the union. A man, a widow concubine and their children form a natural, as opposed to a legal, family, and the position of the genitor, though precarious, is acknowledged socially in several ways. 587

4. *Unmarried Concubinage.* A child of an unmarried woman has no pater but his genitor may become his pater on payment of a fee of 4 to 6 cattle to legitimise him. If the fee is not paid, the child belongs to the mother's lineage, and any man whom the mother cares to live with for the time being is regarded as his foster father. In certain respects the status 848 [611] 000

(1) Evans-Pritchard, "Some aspects of marriage and the family among the Nuer", 1938, p.318.
(2) Evans-Pritchard, *op.cit.*, 1938, p.320.
(3) *Ibid.*, p.325.

16; Evans-Pritchard E-5 (1931, 1936) 1956
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but rather as names numbered, as it were, in the archives of the lineage. They think of the dead continuing in this way in the living. It is to ensure the survival of the dead in their names, Nuer say, that they have the customs of the levirate, widow-concubinage, and ghost-marriage.

I have discussed these practices at length elsewhere,[1] and here it is only necessary to show their connexion with the matter under discussion. Nuer practise the true levirate. Widows are neither remarried nor inherited but continue till death to be married to their dead husbands to whose names they continue to bear children begotten by their dead husbands' brothers, with whom they have in certain circumstances an obligation to live. If, however, for one or other reason, a widow does not choose to live with one of her dead husband's brothers she may cohabit with any man she pleases, but all children such a widow-concubine may bear to her lovers count as children of her dead husband. The custom of ghost-marriage further ensures that every man must have a son who will be called after him '*gat* so-and-so', 'son of so-and-so'. If a man dies without a male heir and without leaving a widow to bear him male heirs it is a paramount duty for his near kin to marry a wife to his name before they take wives in their own names. In theory at any rate, therefore, every man has at least one son and through this son his name is forever a link in a line of descent. This is the only form of immortality Nuer are interested in. They are not interested in the survival of the individual as a ghost, but in the survival of the social personality in the name.

The memory of a dead man is thus kept alive by its being constantly on people's lips through the favoured patronymic usage during the lifetime of his children and afterwards in the recitation of a line of descent. This is why at a mortuary ceremony Nuer stress that a man who has died is not entirely finished. 'His children will carry on his name.' A dead man's name is also on people's lips in reference to bridewealth cattle. If a man has a right to cattle in the division of a girl's bridewealth he does not lose that right at death. Indeed, if he is dead he not only retains the right but his claims are given precedence, as being 'the right of a ghost', over those of the living. These cattle are *ghok jookni*,

[1] 'Some Aspects of Marriage and the Family among the Nuer', *Zeitschrift für vergleichende Rechtswissenschaft*, 1938 (reprinted in *Rhodes-Livingstone Papers*, No. XI, 1945); also *Kinship and Marriage among the Nuer*, 1951, chaps. iii and iv.